

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )	
Implementation of Section 621(a)(1) of )	
the Cable Communications Policy Act of 1984 )	MB Docket No. 05-311
as amended by the Cable Television Consumer )	
Protection and Competition Act of 1992 )	

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**COMMENTS OF CITY OF FOSTER CITY, CALIFORNIA**

These Comments are filed by the City of Foster City, California ("Foster City" or "City") in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Foster City believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community, we issue a cable franchise as described in the Federal Cable Act. We also have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are often discussed with the cable company in conjunction with the franchise agreement. These documents are collectively referred to as the "franchise" below.

**Cable Franchising in Our Community**

**Community Information**

Foster City is located in San Mateo County in the San Francisco / San Jose metropolitan area. The City has a population of approximately 29,000. Our franchised cable provider is Comcast of California, XII ("Comcast"). Our community has negotiated cable franchises with cable operators since the late 1970's.

**Our Current Franchise**

Our current franchise with Comcast began on December 1, 2005 and expires on November 30, 2020. It is a non-exclusive cable franchise agreement. Our previous agreement expired in October 2003. We just completed franchise negotiations with Comcast that led to this franchise agreement. Under the statutory timeline laid out in

the Federal Cable Act, the cable operator had a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. When we began negotiations for this latest franchise agreement, the cable operator was AT&T Broadband. Seven (7) other agencies<sup>1</sup> that were members of the San Mateo County Telecommunications Authority<sup>2</sup> ("SAMCAT") had franchise agreements which expired within 6 months of one another. Accordingly, these eight (8) agencies grouped together to negotiate concurrently with the cable operator, in order to create efficiencies and economies of scale amongst the 8 agencies. The cable operator agreed to this joint negotiations process. AT&T filed the requisite notice requesting that we commence informal negotiations with them in October 2000. We began franchise negotiations with AT&T in the Fall of 2002. Immediately thereafter, AT&T merged its operations with Comcast. A Section 394 Transfer proceeding ensued, and the City approved the transfer in November 2002. It was not until after that date that we were able to begin informal negotiations in earnest with Comcast, the new operator. Negotiations completed in October 2005, and the franchise agreement was approved by our City Council on November 21, 2005.

Our franchise requires the cable operator to pay a **franchise fee** to the City in the amount of 5.0% of the cable operator's gross revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator in accordance with the Federal Cable Act. It is important to note that the definition of gross revenues includes a broad definition that includes not only cable service fees (less bad debts), but other revenues earned by the operator on cable operations, including (but not limited to) late fees, installation and upgrade charges, converter / control box fees, advertising revenue, home shopping commissions, and lockout device fees. In short, the cable operator compensates the City for the use of its rights-of-way on virtually all revenues earned in the operation of its cable services in Foster City.

We require the cable operator to provide the **capacity for public, educational, and/or governmental ("PEG") access channels** on the cable system. We currently have 2 channels devoted to public access: we have operated a local government access channel known as FCTV since 1981 that serves Foster City subscribers; and, a second channel known as Peninsula TV, is operated by SAMCAT as a regional community channel that serves public, educational and government access community needs in San Mateo County. Comcast is also required to provide a 3<sup>rd</sup> channel as early as January 1, 2007 that can serve any lawful PEG purpose, and a 4<sup>th</sup> channel no sooner than 2 years after the 3<sup>rd</sup> is activated for the any lawful PEG purposes as determined by the City.

The franchise requires that our **PEG channels be supported** in the following ways by the cable operator: Comcast is required to build infrastructure at their expense

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<sup>1</sup> The 7 agencies that joined with Foster City in negotiations were: Belmont, Brisbane, Millbrae, Redwood City, San Carlos, San Mateo, and San Mateo County. These 8 agencies combined to represent close to 78,000 cable subscribers.

<sup>2</sup> SAMCAT is a joint powers authority of which the City of Foster City is one of 18 member agencies, which deals with telecommunications issues on a regional level in San Mateo County.

to accept video origination at our City Hall. Comcast has committed a sum total of \$560,201 dedicated as a PEG Access Capital Grant with a payment schedule that started January 1, 2006 and ends December 1, 2015. These funds support a portion of the ongoing capital needs for FCTV, and the City's portion of capital contributions towards Peninsula TV (which is funded by 14 of the 18 SAMCAT agencies).

Our franchise contains the following **institutional network ("I-Net") requirements**: Comcast has committed to constructing a fiber network that will interconnect ten (10) locations within Foster City. Such locations include City Hall, recreation and parks facilities, public K-8 schools, and a performing arts center. Concurrently with the 7 other agencies mentioned above, the Fiber Network will also interconnect the 7 City Halls and the County Government Center. When combined with those 7 agencies' respective sites, a total number of 86 sites across 8 agencies will be interconnected. The construction of the fiber network will be substantially complete by December 31, 2007. We expect to use our I-Net facilities in the following ways:

- Video Origination – We will be able to originate video from any of the 86 sites throughout the County for transmission on any local government access channel or on Peninsula TV, the regional channel. Events such as legislative (City Council) meetings, town hall meetings, emergency operations events, youth sports, concerts, seminars / conferences, and community parades or celebrations will be cablecast or recorded live on location. Such video origination can also be used for private ("narrowcasted") transmission for such uses as: public safety (police and fire) training; emergency operations training and/or communications; regional municipal / education meetings; classroom training; and, security surveillance between any of the sites on the Fiber Network.
- Data transmission – Foster City will use the Fiber Network for data communications between municipal locations. Also, the K-8 schools operated by a local school district intends to use the fiber network to support their network communications needs. Regionally, agencies are anticipating the use of the fiber network as a "backhaul" for wireless and wired public safety communications, a backbone for county educational data resources, as a way to share geographic information systems data, and to support other applications such as elections reporting and registration and public health information.
- Voice communications – The schools in Foster City are interested in using the Fiber Network to support internal voice communications using Voice over IP technology. The network can also replace existing modem-type communications by converting those services to Ethernet applications.

Our franchise contains the following requirements regarding **emergency alerts**: Foster City, or the County Emergency Operations personnel, has the ability to override video and audio on all channels on the cable channel line-up (digital, analog and pay-per-view) to provide emergency messages to the community. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following **customer service obligations**, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise:

- Regulation of service rates in compliance with 47 CFR Part 76 subpart N
- Non-standard installations
- Sales procedures
- Consumer protection and service standards, including office hours and telephone availability, outages, service calls, notifications to subscribers, billing and information, compliance verification, and subscriber complaints.
- Refund policies
- Local office requirements
- Records and reporting requirements

Our franchise contains the following reasonable **build requirements** for the cable operator: the cable operator is required to provide a bi-directional system with a minimum of 750 MHz capacity to all customers within 125 feet of its existing distribution system, which includes all residences and approximately 50% of the business community. The system utilizes a hybrid fiber-coaxial architecture in accordance with FCC technical standards. Our franchise agreement provides us the opportunity to ensure they are maintaining their physical cable plant in accordance with national, state and local building and electric codes. We experienced significant infrastructure issues during a technical audit conducted in 2002: grounding and termination issues, pedestal hazards, and workmanship. These represented issues of public health and safety that we were able to cure through enforcement provisions in the franchise agreement.

Our franchise requires that the cable operator currently **provide service to the areas** of our community noted herein: all current Foster City residences are capable of receiving service from Comcast. An area in the north-east corner of Foster City, which currently comprises solely commercial land uses and that is approximately 20% of the land area of the City, is not served. That area is currently being reviewed in our City's General Plan process as potential mixed use (commercial / residential). No requirements have been negotiated in the agreement to serve that area, although the cable operator has informally indicated an interest in serving that area when the residential densities meet their financial targets for capital investment. Additionally, the franchise expressly prohibits income-based demographic "redlining" of the service area by the cable provider.

In order to ensure that our residents have **access to advanced telecommunications technologies**, the previous franchise agreement called for a requirement to implement the hybrid fiber-coaxial system described above. This helped provide assurance to our community that advanced telecommunications services had the opportunity of being provided by the cable operator. Accordingly, in 1999, broadband (high-speed internet) services were rolled out to the community. Approximately 60% of residences use the cable operator's high-speed internet services based on informal requests for such information from the cable provider, with others using a mix of DSL services from the local Bell operator and/or dial-up access. No

other telecommunications services (e.g., VoIP) have been deployed by the existing cable operator, although they have notified us of the intent to roll out such services in 2007.

Our franchise contains a "Competitive Equity" (or "level playing field") provision which states the following:

*"The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City; provided, however, that no such franchise or similar lawful authorization shall contain material terms or conditions which are substantially more favorable or less burdensome to the competitive entity than the material terms and conditions herein, including, but not limited to: Franchise Fees; insurance; System build-out requirements; security instruments; Public, Education and Government access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are generally equivalent. If any such additional or competitive franchise is granted by the City, the City agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions.*

*Notwithstanding any provision to the contrary, at any time prior to the commencement of the Grantee's thirty-six (36) month renewal window provided by Section 626 of the Cable Act, that a non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of Video Programming within the Franchise Area without a franchise or other similar lawful authorization granted by the City, then the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date thirty six (36) months from the first day of the month following the date on which the competitor passes twenty-five percent (25%) of the homes in the Franchise Area and begins providing Cable Service. Grantee shall immediately thereafter secure franchise renewal rights pursuant to Section 626 of the Cable Act with no further notice to the City required. The City and Grantee shall then enter into proceedings consistent with Section 626 for renewal of this Franchise. The City and Grantee shall have all rights and obligations provided under said Section 626. In no*

*event, however, shall the term of this Franchise be reduced to less than eight (8) years from the effective date of this Franchise.*

*Notwithstanding any provision to the contrary, should any non-wireless facilities based entity provide Cable Service within the Franchise Area during the term of this Franchise without a franchise granted by the City, then Grantee shall have all rights which may be available to assert, at Grantee's option, that this Franchise is rendered 'commercially impracticable,' and invoke the modification procedures set forth in Section 625 of the Cable Act."*

Our franchise contains the following **insurance and bonding** requirements:

- Performance bond in the amount of \$250,000 to cover cable system construction activities.
- Performance bond in the amount of \$100,000 for franchise breaches, subject to noticing provisions.
- Normal permitting and bonding requirements made of all contractors working in the City's rights-of-way.
- Insurance in the following amounts:
  - General Liability -- \$2 million
  - Automobile Liability -- \$2 million
  - Workers' Compensation – per State statutes

The cable franchise grants the cable operator **access to the public rights of way and compatible easements** for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate City and/or County department before it may access the public rights of way. The cable operator is subject to the normal permitting requirements of any contractor working in or encroaching the City's rights-of-way. Fees are assessed based upon the construction value of the project, and can range as low as \$150 to as high as \$100,000 or more depending on the extent of construction. The franchise agreement also requires that the cable operator relocate facilities at their cost within 30 days when safety, health or welfare of the public requires a change mandated by the City.

The franchise agreement provides for the following **enforcement mechanisms** by which we are able to ensure that the cable operator is abiding by its agreement:

- Right to records – in some cases upon request, in others as required per the franchise, related to customer service standards, franchise fees, construction maps, and others. In any case, the City has the right to inspect Comcast's records during normal business hours at their local offices.
- Right to audit – the City can audit submitted records at the City's expense unless the audit yields underpayment of franchise fees exceeding 5% of what was originally reported.

## **The Franchising Process**

As indicated under "Our Current Franchise" section above, Foster City worked together with 7 other agencies in San Mateo County to jointly negotiate a successor franchise agreement with the cable operator. Comcast's cable system serves all communities with the exception of San Bruno (a municipally-owned cable system) in San Mateo County. Accordingly, similar issues exist throughout the region as it pertains to the terms of a cable franchise agreement. Comcast agreed to the joint negotiations with these agencies, as the process allowed the company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs. It is my understanding that Comcast is using this model to negotiate successor franchise agreements with Colma and Pacifica, two other cities in the north County and whose franchise agreements expire within several months of one another.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act, it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated based upon the applicability of those laws (federal, state or local) to the existing terms of the franchise agreement. In essence, the terms of the franchise agreement prevail unless they are superceded by federal, state or local law. In addition, several conditions within the franchise agreement (e.g., technical, construction, customer service) specifically call out federal, state or local law as governing. The most noteworthy provision in the current franchise agreement is with respect to any subsequent federal or state law changes that alter the competitive landscape with respect to cable or video franchising, which is discussed under "Competitive Cable Systems" below.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance, there are several state laws that deal with noticing provisions of actions taken by the legislative body of a local government (e.g., 72 hour notice of actions to be taken in any public meeting, 10 day notice for any public hearings, "sunshine laws" to ensure open public access to government). In addition, several conditions in the agreement require the local government to provide notices to the cable operator and the right for the cable operator to cure potential breaches of the agreement. In addition, federal law mandates formal vs. informal negotiations processes that have several requirements to ensure the cable

operator is treated fairly by the local franchise authority. In short, the local government is not exempt from several due process requirements in managing its relationship with the cable operator.

### **Competitive Cable Systems**

Since the early 1990's, City staff have been approached by its residents and business community with an interest of seeing advanced telecommunications services made available in Foster City. The City Council created a Cable Advisory Committee, which over time became the Information Technology Advisory Committee, to provide advisory recommendations to City Council and staff regarding the deployment of such services in Foster City. As part of that initiative, residents have indicated their desire in various ways for competitive video services in Foster City over the past 15 years.

Over 10 years ago, Foster City became actively involved in regional telecommunications efforts through SAMCAT to seek competitive video services providers in the region. Nearly 8 years ago, RCN Communications entered into negotiations with several cities in San Mateo County to provide competitive services as a choice to the incumbent primary cable operator, Comcast. An agreement was reached between those cities and RCN less than 2 years from the date RCN made its first request. RCN has not formally approached Foster City for a competitive franchise agreement because of our geographic location compared to the high-density corridors of other cities that run along the major north-south highways in San Mateo County, US Highway 101 and State Route 82 (El Camino Real). Informal discussions between RCN and the City have taken place over the past 7-8 years. However, due to its financial situation, RCN has not determined it economically feasible to build in Foster City.

In October 2005, Foster City was approached by the local Bell company, AT&T Corporation (formerly SBC Communications), with various encroachment permits to upgrade their existing infrastructure under a project known as "Project Lightspeed." Based upon the City's understanding of Project Lightspeed from industry newsletters, and AT&T's own press releases, that project intends to include a provision for video services using a technology known as "Internet Protocol Television". The City met with AT&T representatives about the project up through the Christmas 2005 holidays to learn more about its architecture and, in particular, the nature of the video services being provided. Based upon the City's analysis of those services, the City feels that AT&T is subject to cable franchise provisions under the Federal Cable Act and the State of California Government Code section 53066, et al. While AT&T does not feel it is subject to local franchising, AT&T representatives have proactively met with the City to enter into some form of a video services agreement. During the period of January 26, 2006 through the date of this filing, intense discussions on various proposals have taken place between City staff and AT&T representatives to create an agreement that will allow AT&T to deploy their infrastructure and, eventually, provide video services to our community. The City and AT&T are now using the recently-negotiated Comcast franchise agreement discussed herein as the basis for the agreement that AT&T is seeking. Discussions will continue beyond the date of this filing. AT&T and the City are



currently on a timeline to have an agreement presented to the City Council in March 2006, less than 2 months from the date those negotiations started in earnest. In short, the City is highly interested in seeking out competitive services providers in our community. **We believe that our actions as evidenced herein indicate that our genuine willingness and desire to quickly negotiate mutually beneficial agreements for the provision of video services in our community and fair compensation for the use of our rights of way.**

## **Conclusions**

As evidenced above, the local cable franchising process functions well in Foster City, California. We have experienced executive staff members that are working proactively with cable and other video services providers to both see that the needs of the local community are met and to ensure that the practical business needs of such providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and even-handed manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. We have the capacity to assist the public in getting good customer service from its cable service providers. We understand the geographic, climatic, and infrastructure issues that may impair cable services from time to time in our community. We are well versed in the aspects of federal and state law to be a frontline resource for our community to help them get great service from our cable service providers. We feel that any attempts to nationalize cable franchising, including customer service enforcement, will degrade the effectiveness and timeliness of response to customers. Federal government need not establish and invest millions in taxpayer or ratepayer dollars to create an oversight bureau for cable franchises when those core competencies exist at the local level.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features, such as PEG access, institutional networks or local emergency alerts, will be available to meet local needs. These factors are equally present for new entrants as for existing users. We are best positioned to determine what is in the best interests of our community.

The City of Foster City, California therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under

existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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